IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/02/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 5510 of 1997
and
W.P.M.P.No. 58448 of 2002

Smt. Pandiammal,
W/o. (late) Vellaiyan,
M.G.R. Nagar, Kodankipatti,
Palamedu (P.O), Vadipatti (Tk.,),Madurai Dist. .. Petitioner.

-Vs-

1. The State of Tamil Nadu,
represented by its Chief Secretary,
Fort St. George, Chennai-9.

2. The Secretary to Government,
Public (Law and Order) Department,
Fort St. George, Chennai-9.

3. District Collector, Madurai District,
Madurai.

4. The Director General of Police,
Govt., Estate, Chennai-2.

5. The Revenue Divisional Officer,
Madurai, Madurai District. .. Respondents.

Petition under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, as stated therein.

For petitioner:: Mr. R. Malaichamy.

For respondents:: Mr. D. Krishnakumar,
Spl. Govt., Pleader.

:ORDER

The petitioner Pandiammal, for the death of her husband Vellaiyan in Alanganallur Police Station on 21-10-1989 while in police custody, has filed the above Writ Petition, claiming a compensation of Rs.3 lakhs.

2. The case of the petitioner is briefly stated hereunder:
According to her, she belongs to Hindu, Mathaari (Sakkiliar) community, which comes under the Scheduled Caste. She has one male minor child and one female minor child. Alanganallur Sub Inspector and his two Policemen came to her residence on 20-10-89 and had taken his husband along with one Nallaiyan on the alleged theft of one cow and wrongfully confined her husband in the said Police Station, beaten him ruthlessly and tortured him and caused injuries to his body, thereby her husband died in police custody on 21-10-89. It is a clear custodial death. On the basis of complaint and Dharna by various people and political parties in support of her rightful claim, the District Collector, Madurai District/third respondent herein, ordered preliminary enquiry into the death of her husband in police custody on 21-1 0-89. The Revenue Divisional Officer was appointed to conduct the preliminary enquiry and ultimately he concluded that it was a case of death in police station custody. He also requested the third respondent's permission for a detailed Magisterial enquiry into the death of her husband, accordingly a Magisterial enquiry was ordered. The Revenue Divisional Officer, who conducted the Magisterial Enquiry, after recording statements from all the persons concerned, found that Sub Inspector of Police, Alanganallur and other constables jointly committed the offences under Sections 330, 342 and 323 I.P.C. by wrongfully confined her husband and voluntarily caused 10 injuries on her husband's body and thereby resulted in custodial death. The enquiry report of the Revenue Divisional Officer was submitted to the Government of Tamil Nadu. The Government, after careful consideration of the said R.D.O's report, has issued an Order in G. O.Ms.No. 1520 dated 25-9-199 0 for launching criminal prosecution and departmental action against the above said officials involved into the death of her husband in police custody. Pursuant to the said Government Order, the third respondent in his proceedings directed the 5th respondent to launch criminal prosecution in the appropriate court against the police officials concerned. The 5th respondent, after a prolonged time filed a private complaint against the accused officials in P.R.C.No. 27 of 1996 which is pending before a Court at Madurai. It is evident that her husband was illegally and wrongfully detained by the police officials and inhumanly tortured and beaten up which resulted in death in police custody. Her husband was the only bread-winner in her family. Though Government itself has provided compensation for death in police custody, in spite of her request, no amount has been paid to her; hence she approached this Court for appropriate direction to the respondents 1 and 2 for payment of Rs.3 lakhs as compensation for the custodial death of her husband.

3. The Secretary to Government, Public and Rehabilitation department, Secretariat, Chennai-9/first respondent herein, has filed a counter affidavit on behalf of other respondents. It is stated in the counter affidavit that the present writ petition is belated one. One cow of one Kanniappan of Kalvelipatti was said to have been stolen by Vellaiyan and Nallaiyan. The said Kanniyappan, owner of the cow, had preferred a complaint before the Sub Inspector of Police, Alanganallur. He had also produced the accused Vellaiyan and Nallaiyan before the police for enquiry on 20-10-89. It is alleged that the said Vellaiyan died due to hanging in the bath room of Alanganallur Police Station and the dead body was removed by the police and thrown out into Periyar Main Channel which was recovered from this channel. To enquiry into

this incident, the Collector, Madurai had ordered for an enquiry under PSO-145. The Revenue Divisional Officer, Madurai, who had conducted the enquiry, reported that 7 police personnel were responsible for the death and illegal custody of the said Vellaiyan. The Revenue Divisional Officer recommended for taking criminal action against them for the above lapses. The Government in G.O.Ms.No. 1 520, dated 25-9-90 ordered for launching criminal prosecution and departmental action against the above police officials. As per the order of the Government, a criminal case in P.R.C.27/96 was filed before the Judicial Magistrate-No.5, Madurai and is pending. Since the Government have already taken necessary steps by initiating criminal prosecution and departmental proceedings, the petitioner is not entitled to any compensation. It is true that the Government in G.O.Ms.No. 874 , Public (Law and Order-B) Department, dated 8-8-96 have issued orders to include the category of "death due to police torture" for the sanction of financial assistance to the victims. But, in this case, the death of Vellaiyan, husband of the petitioner, has occurred only on 20-10-89 i.e., before the date of issue of the said Government Order; hence the petitioner is not eligible for financial assistance and the prayer of the petitioner cannot be considered for sanction of financial assistance.

4. In the light of the above pleadings, I have heard Mr. R. Malaichamy, learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

5. The only point for consideration in this writ petition is, whether the death of Vellaiyan was due to police torture and, if so, what is the quantum of compensation payable to the petitioner?

6. In view of the information furnished in the counter affidavit, I am of the view that it is unnecessary to refer the factual details once again. In the counter affidavit, it is fairly stated that though the husband of the petitioner namely Vellaiyan and another person Nallaiyan were enquired by the police of Alanganallur police station relating to a complaint of one Kanniyappan for the theft of his one cow, it is fairly admitted that based on the complaint of the petitioner and several others, including the political parties, etc., an enquiry was ordered by the District Collector. Pursuant to the said order, the Revenue Divisional Officer, Madurai conducted the enquiry into the cause of death of Vellaiyan and ultimately found that 7 police officials were responsible. It is the complaint of the petitioner that her husband Vellaiyan died on 21-10-89 due to torture by the police. It was found that the deceased Vellaiyan died due to hanging in the bath room of Alanganallur police station on 21-10-89, that the dead body was removed and thrown out into Periyar channel and that the dead body was subsequently recovered by Melur Police and brought to the Government Rajaji Hospital on 22-10-89. The Collector of Madurai has ordered for an enquiry under P.S.O-145. The Revenue Divisional Officer, who conducted an enquiry, and on the orders of the Government, has filed a criminal case on 5-7-96 before the Judicial Magistrate No.5, Madurai against 7 police officials of Alanganallur Police station under Sections 323, 166, 306 and 201 I.P.C. The enquiry officer has stated that there were 19 wounds found on the dead body of Vellaiyan, and concluded that the Sub Inspector of Police (Crime),

Alanganallur Police Station and 6 police personnel jointly committed the offences under Sections 330, 342, 323 I.P.C. The Revenue Divisional Officer has also found that they were liable for punishment under Section 306 I.P.C. It is also clear from the counter affidavit that the Government after carefully analysing the enquiry report of the Revenue Divisional Officer, accepted the same and directed the latter to initiate criminal and departmental proceedings against all the 7 police officials. The report of the Revenue Divisional Officer, acceptance of the report by the Government, direction for criminal prosecution under various sections of Indian Penal Code and the initiation of departmental action against 7 police officials would clearly show that the said Vellaiyan, husband of the petitioner, died due to police torture while he was in custody. When the deceased was enquired in respect of death of one cow of Kanniyappan, as rightly observed by the enquiry officer, there is no need to cause 19 injuries on his body. Mr. D. Krishnakumar, learned Special Government Pleader, by drawing my attention to a judgement of II Additional Sessions Judge, Madurai, dated 30-11-2000 in Sessions Case No. 587/99, acquitting all the 7 police officials from the charges levelled against them, would contend that the petitioner is not entitled to any compensation from any one of the respondents. I am unable to accept the said contention. I have already referred to the report of the Revenue Divisional Officer holding that 7 police officials were responsible for the death of Vellaiyan, acceptance of the said report by the Government and the subsequent follow up action, including prosecution and departmental action. Merely because the criminal case ended in acquittal, that would not exonerate the responsibility of the Government from paying reasonable amount by way of compensation to the victim.

7. Learned counsel appearing for the petitioner has brought to my notice that the Government itself has passed an Order in G.O.Ms.no. 874, Public (Law and Order-B) Department, dated 8-8-96 for payment of compensation to the victims in respect of custodial death due to police torture. It is also brought to my notice that by G.O. Ms.No. 153, Public (Law and Order.B) Department dated 31-01-98, the Government has enhanced the quantum of compensation from Rs.50,000/- to Rs.1,00,000/- to certain categories which includes death due to police torture. Here again, learned Special Government Pleader pointed out that inasmuch as the death of Vellaiyan had occurred on 20-10-89 and the Government Order came to be passed on 8-8-96, the petitioner is not eligible for financial assistance. Here again, I am unable to appreciate the said contention. No doubt, according to the Secretary to Government, Public and Rehabilitation department, Chennai-9, the Government in G.O.Ms.No. 874 Public (Law and Order) Department dated 8-8-96 have issued orders to include the category of "death due to police torture" for the sanction of financial assistance to the victims. However, in the light of the decision of the Government accepting the report of the Revenue Divisional Officer, holding 7 police officials were responsible for the death of the said Vellaiyan and ordering prosecution and departmental action against them, I am of the view that in all fairness the Government itself ought to have granted financial assistance to the petitioner. I have already referred to the grievances of the petitioner, namely, that on the date of death of her husband under police custody on 21-10-89, she had to look after one male minor child and another female child. It is also her case that her in-laws were also living with her.

She belongs to Sakkiliar community which comes under the Scheduled Caste. It is also brought to my notice that the petitioner V. Pandiammal is an illiterate lady and at the time of filing of the writ petition i.e., in 1997, she was aged about 35 years. She lost her bread-winner and she has to look after two minor children as well as aged in-laws. Considering all the above aspects, more particularly, the fact that from the date of the death of her husband-20/21-10-89, viz., for the last 13 years, the petitioner being a poor illiterate lady is struggling for her survival with other family members and in spite of Government's decision holding responsibility on the officials of Alanganallur Police Station, I am of the view that ends of justice would be met by directing the respondents 1 to 3 to pay a compensation of Rs.2,00,000/- for the custodial death of petitioner's husband. It is brought to my notice that pursuant to the direction of this Court, the Government have invested Rs.50,000/- as interim relief in the name of the petitioner-Pandiammal in the Bank of Maharashtra, Madurai Branch for a period of five years. The respondents 1 to 3 are directed to invest the balance amount in the same Bank in the name of the petitioner herein-Pandiammal within a period of 4 (four) weeks from the date of receipt of a copy of this Order. On such deposit being made, the petitioner-Pandiammal is permitted to withdraw periodical interest once in three months for the entire amount (Rs.50,000/- already deposited + Rs.1,50,000/- to be invested in the same Bank). It is further made clear that after the expiry of the due date, she is permitted to withdraw the entire amount. Writ Petition is allowed with the above observation. No costs. Consequently, WPMP No. 58448 of 2002 is closed.

R.B.

Index:- Yes
Internet:- Yes.

To:-
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Government of Tamil Nadu,
Fort St. George, Chennai-9.

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